



EMPLOYMENT TRIBUNALS

Claimant: Mr A Thomas

Respondents: (1) Quad Recruitment Limited
(2) Mr J Roberts

Heard: via video

On: 22 September 2020

Before: Employment Judge S Jenkins

Representation

Claimant: In person

Respondent: Mr S Hoyle (Legal Consultant)

JUDGMENT

The Claimant was, at all material times, disabled for the purposes of section 6 of the Equality Act 2010.

REASONS

Background

1. The hearing was to deal with three issues:
 - (i) Whether the Claimant was, at the material times, disabled for the purposes of section 6 of the Equality Act 2010 (the “Act”);
 - (ii) If so, whether the Respondents had knowledge, or should reasonably have had knowledge, of that disability;
 - (iii) Depending on the outcome of the first two matters, general case management.

In the event, we only had time to address the first issue during the hearing.

2. I heard evidence from the Claimant by reference to several paragraphs within a broader witness statement dealing with all aspects of his claim. I also heard evidence from three employees of the First Respondent; Scott Beattie, Dewi Jones, and Hannah Williams. I also considered the documents in the preliminary hearing bundle to which my attention was

drawn, principally the Claimant's GP notes and Fit Notes.

3. The Claimant's claim had initially been presented on the basis that he had two conditions, both of which constituted disabilities for the purposes of the Act. One was a physical condition relating to the Claimant's heart, with the other being a mental health condition of depression and anxiety. In the event, at the commencement of the hearing, the Claimant confirmed that he accepted that his heart condition did not amount to a disability for the purposes of the Act.

Law

4. In terms of the law I had to apply in consideration of the question of whether the Claimant was disabled at the relevant times, I was conscious that section 6(1) of the Act notes that someone would be categorised as disabled for the purposes of the Act if they had (for the purposes of this case) a mental impairment, which had a substantial and long-term adverse effect on their ability to carry out day-to-day activities.
5. With regard to the issue of "long-term", I noted that this required me to consider whether the condition had lasted for at least 12 months or was likely to last for at least 12 months.
6. In relation to the question of what is "substantial", I noted the Guidance provided by the Secretary of State that what I had to consider was whether the impact was "more than minor or trivial".
7. I also noted the provisions of paragraph 5 of schedule 1 of the Act, which direct that an impairment is to be treated as having a substantial adverse effect if measures are being to correct it, and, but for that, it would be likely to have that effect. I noted that, in this context, measures included medical treatment, and that case law had established that medical treatment extended beyond the prescription of medication, and included matters such as counselling.

Findings

8. The findings relevant to the issue of whether the Claimant was, at the relevant times, disabled are as follows.
9. The Claimant was employed by the First Respondent as a recruitment consultant from June or July 2018 (there is a dispute between the parties as to the precise start date, which was not material) until 31 May 2019. During this period of approximately eleven months, the Claimant had no material absences due to illness prior to May 2019. He indicated in his evidence that he suffered what he believed had been a panic attack at work on 6 August 2018, resulting in a partial loss of sight and a splitting headache. However, the medical notes record that the Claimant visited his surgery, and that his GP gave a diagnosis of, and treatment for, migraine on 7 August 2018. I did not therefore consider that this formed part of the condition of depression and anxiety.
10. The Claimant then attended his GP on 10 May 2019, and a Fit Note was issued, recording the Claimant as "depressed", and certifying him as unfit

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for work for a two-week period. The Claimant's medical notes record that he described himself as feeling depressed and low and as having no motivation, and that he had felt like that for the previous six months. The Claimant accepted, however, that he had not sought treatment for depression prior to that. At that time, the Claimant was prescribed citalopram, an antidepressant, at a dosage of 20 mg.

11. The Claimant attended the surgery again on 24 May 2019, and a further Fit Note was then issued for a further two weeks, recording that the Claimant may be fit for work and, in the section listing what the Claimant may benefit from, recording that the Claimant was "still on SSRI", i.e. was still taking citalopram.
12. The Claimant had not in fact been in work at that stage since 8 May 2019, 9 May having been a day on which he took annual leave, and, prior to his return, he was dismissed, on 31 May 2019.
13. Subsequent to the termination of his employment, the Claimant travelled to his "stag do" in Ibiza, but suffered a panic attack whilst there, and had to return within 24 hours. He attended his GP on 12 June 2019, and the notes record that he was "panicking a lot" and that he had been dismissed from his job. In addition to continuing the citalopram, the Claimant was prescribed propranolol, a beta-blocker.
14. The Claimant attended his surgery again on 10 July 2019, and the notes record that he reported that he was having good days and bad days, and also that he was well and alert. His citalopram prescription was continued and his propranolol dosage was increased, and the note also recorded that the Claimant was due to commence counselling in late July 2019.
15. A similar comment about the Claimant's state of health was recorded by his counsellor on 29 July 2019, and the counsellor also recorded, on 14 October 2019, that the Claimant felt "in a much better headspace", that he still had episodes of slight anxiety but was working through them well, and had started his own business.
16. In that regard, the Claimant confirmed that he was still engaged in that business, the manufacture of furniture, albeit only on a part-time basis, and that this had commenced from his mother's premises, but had subsequently moved to commercial premises.
17. The Claimant confirmed that he continued to take medication in the form of citalopram and propranolol.
18. The other relevant evidence put before me was that the Claimant had attended high intensity fitness sessions with Mr Beattie on five or six occasions over a period of some five or six weeks. It was not clear when that occurred, other than that it was in 2019, and must have been prior to the commencement of the Claimant's sickness absence on 10 May 2019.

Conclusions

19. Considering the legal issues identified above, in the context of my findings, I noted that the Respondents accepted that the Claimant had suffered from a

condition of depression, but had noted that that had never been described by the Claimant's GP as "severe", that the medication he was taking was at the lower end of the potential dosages, and that he had not been treated with any more significant intervention.

20. With regard to the question of the substantial and long-term impact of the Claimant's condition on his day-to-day activities, I concluded that if the impact of medication was left out of account, I would not be satisfied that the Claimant had suffered the required substantial long-term adverse effect. I noted that the Claimant had been diagnosed as suffering from depression in May 2019, and that even if the Claimant's evidence was accepted at its highest, he had indicated that he had experienced the difficulties which led him to consult his GP for approximately six months by then. I also noted that the Claimant, by October 2019, was "in a better headspace". Therefore, it would seem that the Claimant had been suffering from any substantial adverse effect on his day-to-day activities for, at most, a period from roughly the end of 2019 until roughly October 2020, although the period could have been somewhat shorter than that.
21. However, I was conscious that I was required to consider the impact of the Claimant's condition on him in its unmedicated state. I noted that the Claimant had been prescribed two items of medication, that the dosage of the second had been increased in July 2019, and that he was still taking both prescribed medications. I also noted that the Claimant had undergone a course of counselling, which can form part of the consideration of "measures" which might be considered to have had a corrective effect on a claimant's condition.
22. I noted that, by May 2019, the Claimant's condition had got to the stage where he had sought treatment, had been diagnosed as suffering from depression, and had been prescribed medication for that, later being referred for counselling. Whilst the Claimant appeared, certainly by October 2019, to be managing his day-to-day activities well, I considered that his ability to do that was materially affected by the medication he was taking and the treatment he had received.
23. I was conscious that, in terms of the question of the substantial impact of any condition, I only needed to conclude that the impact was more than minor or trivial. I considered that if the Claimant had not been taking his prescribed medication, and had not undertaken the course of counselling, he would have remained in the state he had been in in May and June 2019. The effect of his condition at that time, in terms of him being absent from work and having to return from his stag weekend, indicated to me that the impact of his condition at that time was more than minor or trivial.
24. Bearing in mind that we were looking at this question from the vantage point of September 2020, and even taking the Respondents' case at its highest and proceeding on the basis that the onset of the Claimant's condition occurred in May 2019, I considered that, had the Claimant not been taking the medication and had not undertaken the course of counselling, he would have remained in that state during the period from May 2019 to the present time. Therefore his condition, had it not been ameliorated by medication and treatment, had lasted for at least 12 months, and would, in May 2019, have been likely to have lasted for at least 12 months.

25. Overall therefore I reached the conclusion that the Claimant was disabled at the material time for the purposes of section 6 of the Act, and that he could therefore proceed further with his claim of discrimination on the grounds of disability.

Employment Judge S Jenkins

Date: 23 September 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON 30 September 2020

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FOR THE TRIBUNAL OFFICE